

REMARKS

Prior to the present amendment, claims 39, 41-44 and 46-48 were pending. By this amendment, claims 39, 44, 47 and 48 have been amended. Accordingly, claims 39, 41-44 and 46-48 are currently pending.

Rejection under 35 U.S.C. §112, First and Second Paragraph

On page 2 of the Office action, claims 39, 41-44 and 46-48 were rejected under 35 U.S.C. §112, second paragraph. The examiner contends that the phrase “or a homologous protein thereof, wherein the protein or homologous protein has opsonophagocytic activity” in claims 39, 44, 47 and 48 is vague and indefinite.

On page 3 of the Office Action, claims 39, 41-44 and 46-48 were also rejected under 35 U.S.C. §112, first paragraph. According to the examiner, the specification is not enabled for a composition containing a “... homologous protein thereof, wherein the protein or homologous protein has opsonophagocytic activity.”

Applicants have deleted the phrases which the examiner contends is indefinite and not enabled. In view of the amendments to the claims, the rejections under 35 U.S.C. §112, first and second paragraph are now moot and should be withdrawn.

Rejection under 35 U.S.C. §102(b) over Kunsch et al. (WO 98/18930) and 35 U.S.C. §102(e) over Black et al. (U.S. Patent No. 6,348,328 B1)

On page 10 of the Office Action, claims 39, 41-44 and 46-48 were rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Kunsch et al. (WO 98/18930). The examiner states that a polypeptide disclosed in Table 1 of Kunsch et al. has a sequence of 213 amino acids that is identical to a sequence in claimed SEQ. ID. NO:2, which is 322 amino acids in length. Therefore, the examiner concludes that the instant claims encompass the polypeptide disclosed in Kunsch et al.

On page 12 of the Office action, claims 39, 41-44 and 46-48 were rejected under 35 U.S.C. §102(e) for allegedly being anticipated by Black et al. (U.S. Patent No. 6,348,328). According to the examiner, Black et al. teaches a polypeptide which has a sequence of 48 amino acids that is identical to a sequence in SEQ. ID. NO:2. Therefore, the examiner concludes that the polypeptide disclosed in Black et al. is encompassed in the instant claims.

Applicants respectfully disagree and will address the rejections of the claims under 35 U.S.C. §102(b) and (e) together. Applicants have deleted the word "homologous" from the claims. In addition, the claims have been amended to encompass proteins having SEQ. ID. NO:2 or a protein which has an Expect value as determined by Blast or Blastp computer programs of less than $2e^{-27}$ when compared to SEQ. ID. NO:2.

As stated in the amendment filed on March 28, 2005, and in the accompanying rule 132 declaration of Dr. Hermans, the polypeptides of Kunsch et al. and Black et al. do not have an expect value of less than 10^{-10} when compared to SEQ. ID. NO:2. The examiner is invited to review page 8 of the March 28, 2005 amendment and the executed rule 132 declaration of Dr. Hermans at this time.

$2e^{-27}$ is a smaller number than 10^{-10} . Since the polypeptides of Kunsch et al. and Black et al. do not have an expect value of less than 10^{-10} when compared to SEQ. ID. NO:2, the comparisons also do not have an expect value of less than $2e^{-27}$ as is required in the claimed invention.

Accordingly, applicants respectfully request that the rejection of the claims over Kunsch et al. and Black et al. be withdrawn.

Rejection under 35 U.S.C. §102(e) over Swiss Prot. Accession No. Q02473, P15294 and P14308


On page 13 of the Office Action, claims 39, 42, 43, 47 and 48 were rejected under 35 U.S.C. §102(a) for allegedly being anticipated by Swiss Prot. Accession No. Q02473, P15294 and P14308.

The claims are directed to a protein having the amino acid sequence set forth in SEQ. ID. NO:2 or a protein which has an Expect value as determined by Blast or Blastp computer programs of less than $2e^{-27}$ when compared to SEQ. ID NO:2. The polypeptides disclosed in Swiss Prot. Accession Nos. Q02473, P15294 and P14308 do not have an Expect value of less than $2e^{-27}$ when compared to SEQ. ID. NO:2. Therefore, the claims cannot be said to be anticipated by the Swiss Prot. Accession Nos.

Accordingly, applicants respectfully request that the rejection of the claims be withdrawn.

For the reasons given above, allowance of the pending claims is earnestly requested. If the examiner has any questions regarding this amendment, she is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,


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